

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000511133-0133-01; I.D. 120999B]

RIN 0648-AN52

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas;
Northern Albacore Tuna Rebuilding

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; public hearings; request for comments.

SUMMARY: NMFS proposes to amend regulations governing the
Atlantic swordfish fishery to reduce the annual landings quota
for the north Atlantic swordfish stock to 2,219 metric tons (mt)
dressed weight (dw) for each of the next three fishing years
(2000, 2001, 2002), with 300 mt dw allocated for incidental catch
and the remainder allocated equally to each of the two semi-
annual directed fishery seasons (June 1 through November 30 and
December 1 through May 31). NMFS also proposes to establish an
allowance for dead discards of 320 mt whole weight (ww) in 2000,
240 mt ww in 2001, and 160 mt ww in 2002. Finally, NMFS requests
comments on alternatives to rebuild the stock of northern
albacore tuna.

The intent of these actions is to improve conservation and
management of the Atlantic swordfish and northern albacore tuna
resources, while allowing harvests consistent with
recommendations of the International Commission for the
Conservation of Atlantic Tunas (ICCAT).

DATES: NMFS will hold public hearings in June, 2000 to receive
comments from fishery participants and other members of the
public regarding these proposed regulations. See SUPPLEMENTARY
INFORMATION for hearing dates and times. For individuals unable
to attend a hearing, NMFS also solicits written comments on the
proposed rule. To be considered in developing the final rule,
written comments on the proposed rule must be received at the
appropriate address or fax number (see ADDRESSES) by 5 p.m. on
[insert date 60 days after date of filing for public inspection
at the Office of the Federal Register].

ADDRESSES: See SUPPLEMENTARY INFORMATION for meeting and hearing
locations. Comments on the proposed rule and copies of the Draft
Environmental Assessment/Regulatory Impact Review/Initial
Regulatory Flexibility Analysis (EA/RIR/IRFA) supporting this
action may be obtained from Rebecca Lent, Highly Migratory
Species Division, Office of Sustainable Fisheries, NMFS, 1315
East-West Highway, Silver Spring, MD 20910. These documents may
be viewed on the NMFS website at www.nmfs.gov/sfa/hmspg.html.
Comments also may be sent via facsimile (fax) to 301-713-1917.
Comments will not be accepted if submitted via e-mail or on the
Internet.

FOR FURTHER INFORMATION CONTACT: Rachel Husted or Christopher
Rogers, 301-713-2347; fax: 301-713-1917 or by email at

rachel.husted@noaa.gov. The NMFS website is www.nmfs.gov/sfa/hmspg.html.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (FMP) and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; codified at 16 U.S.C. 1801 et seq.) and the Atlantic Tunas Convention Act (ATCA; codified at 16 U.S.C. 971 et seq.). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT. Swordfish Rebuilding Program

The total weight of the north Atlantic swordfish stock at the beginning of 1999, according to the 1999 ICCAT stock assessment, was estimated to be at 65 percent of that needed to produce maximum sustainable yield (MSY). The biomass at MSY is the target stock size of the rebuilding program for north Atlantic swordfish. The 1998 fishing mortality rate was estimated to be 1.34 times F_{MSY} . Because NMFS is committed to rebuilding north Atlantic swordfish, consistent with the recent ICCAT program, reductions in quotas are required in the immediate future to rebuild the stock to levels that would support MSY.

North Atlantic swordfish landings for all nations combined for 1998 were estimated to be 12,175 mt ww. At the November 1999 ICCAT meeting, a recommendation was adopted to establish a rebuilding program for north Atlantic swordfish and to reduce the total allowable catch for all countries fishing on that stock to 10,600 mt ww (7,970 mt dw) for 2000, 10,500 mt ww (7,895 mt dw) for 2001, and 10,400 mt ww (7,820 mt dw) for 2002. Although the ICCAT recommendation specifies the quota in whole weight, this document refers to the quota in dressed weight (dw = 0.7519 ww) for the purposes of monitoring U.S. harvests, as swordfish are processed at sea and landed in dressed form (head, fins, viscera and tails removed). This proposed rule implements the ICCAT recommendations for rebuilding north Atlantic swordfish.

Under the ICCAT recommendation, the United States is allocated 29 percent of the North Atlantic swordfish landings quota for major harvesting nations (total allowable catch minus the total dead discard allowance) in 2000, 2001, and 2002. This amounts to 2951 mt ww for each year and represents a 5-percent decrease from the U.S. landings quota recommended by ICCAT for 1998. Under the proposed rule, and consistent with the FMP, each year, the quota would be divided between a directed fishery quota and an incidental quota (1919 mt dw directed, 300 mt dw incidental). Consistent with the FMP, the directed fishery quota of 1919 mt dw would be divided into two semi-annual quotas: June 1 - November 30 and December 1 - May 31 (959.5 mt dw for each season). The incidental quota is needed to allow for incidental landings, at levels stated in 50 CFR 635.27, during possible directed fishery closures and for swordfish taken incidental to other fisheries such as the highly migratory species recreational fishery or the pelagic longline fishery for tunas (by incidental

swordfish permit holders).

In addition to the landings quota, ICCAT allocated to the United States 80 percent of the dead discard allowance (i.e., the U.S. share is 320 mt ww in 2000, 240 mt ww in 2001, and 160 mt ww in 2002). The dead discard allowance would be phased out by 2004. The United States would deduct any amount over its dead discard allowance from the U.S. landings quota in the following year. If the United States discards less than its share of the dead discard allowance, the remainder would be added to the total quota available for all fishing nations in subsequent years, and would be reallocated by ICCAT.

In 1998, the United States reported discarding 433 mt ww of dead swordfish in the North Atlantic Ocean. Assuming dead discards occur in proportion to landings, dead discards in 2000 might decrease to 411 mt ww commensurate with the decrease in landings quota (i.e., 5 percent less than 433 mt reported for 1998). This would result in an expected overharvest of the 2000 dead discard allowance by 91 mt ww. If discard rates remain proportional to the adjusted quota in 2001 and 2002, the dead discard allowance would be exceeded by 158 and 230 mt ww, respectively. These overages would require further reductions in the landings quotas and, combined with the initial quota reduction recommended by ICCAT (5 percent), might result in an actual decrease in landings of up to 10 percent by 2002 if the rate of discarding is not reduced (refer to the EA/RIR/IRFA for more details). However, NMFS has published a proposed rule that is designed to reduce dead discards, which should minimize the effects of the phase-out of the dead discard allowance.

The proposed regulatory changes in this rule would further ICCAT's international management objectives for the Atlantic swordfish fishery. NMFS has evaluated the proposed annual quota and the dead discard allowance in accordance with the procedures and factors specified in 50 CFR 635.27(c)(3), and has determined that the proposed measures are consistent with the latest stock assessment and recommendations of ICCAT.

Northern Albacore Rebuilding

In the October 1999 Report to Congress on the Status of U.S. Fisheries, NMFS identified the northern albacore tuna stock as overfished. Alternatives for developing a rebuilding plan for northern albacore are discussed in the EA/RIR/IRFA prepared for this proposed rule. The alternatives considered included no action, a ten-year international rebuilding program negotiated through ICCAT, and a unilateral U.S. action plan. NMFS requests comment on the albacore rebuilding alternatives.

Other ICCAT Issues

ICCAT adopted a number of other recommendations and resolutions at the 1999 meeting that will not require rulemaking but will require management action on the part of NMFS. These include a recommendation reiterating the limitation on fishing capacity of commercial vessels fishing for northern albacore, and a recommendation calling for the United States to endeavor to

limit its total catch of southern albacore to no more than 4 percent by weight of its total catch of south Atlantic swordfish. Several other recommendations include provisions that request Contracting Parties to provide catch data or information related to vessel registration. ICCAT also adopted a non-binding resolution encouraging all parties to participate actively in efforts to combat illegal, unregulated and unreported fishing. NMFS intends to implement these measures through actions outside of the regulatory process and to provide ICCAT with all possible information that has been requested by the Commission.

Summary

NMFS proposes to implement ICCAT's 1999 recommendation of a North Atlantic swordfish U.S. quota of 2,219 mt dw for each year 2000, 2001, and 2002. The U.S. landings quota will remain constant for 2000, 2001, and 2002, but it is subject to adjustment between years (consistent with ICCAT recommendations) if the directed or incidental quota, or the dead discard allowance are exceeded or are not reached.

Consistent with the FMP, the directed fishery quota of 1919 mt dw would be divided into two semi-annual quotas: June 1 - November 30 and December 1 - May 31 (959.5 mt dw for each season). Following a closure of the directed longline fishery, any overharvest or underharvest would be added to, or subtracted from, the incidental quota of 300 mt dw for that year. Any cumulative overharvest/underharvest that occurs during any year would then be subtracted from/added to the following year's quota, consistent with the ICCAT recommendations.

A dead discard allowance would be established. Any discards in excess of the dead discard allowance would be subtracted from the directed quota for the following year.

Public Hearings

NMFS will hold public hearings in June 2000 to receive comments from fishery participants and other members of the public regarding these proposed amendments at the following times and locations:

Monday, June 5, 2000 - Houma, LA, 7-9:30 p.m.
Holiday Inn Holidome, Houma, LA.

Tuesday, June 6, 2000 - Fairhaven, MA, 7-9:30 p.m.
The Seaport Inn, 110 Middle Street, Fairhaven, MA 02719.

Thursday, July 11, 2000 - Pompano, FL, 7-9:30 p.m.
Pompano Beach Civic Center, 1801 NE 6th Street, Pompano Beach, FL 33060.

Thursday, June 22, 2000 - Panama City, FL, 7-9:30 p.m.
National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

Thursday, June 22, 2000 - Barnegat Light, NJ, 7-9:30 p.m.
Barnegat Light Firehouse, Barnegat, NJ 08006.

Special Accommodations

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel Husted or Christopher

Rogers at (301) 713-2347 at least 5 days prior to the hearing date.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act and ATCA. The Assistant Administrator for Fisheries, NOAA (AA) has preliminarily determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic highly migratory species fisheries.

NMFS has prepared an IRFA for this proposed rule. A summary of the IRFA follows (see ADDRESSES for a copy of the IRFA):

The IRFA assumes that the population of small entities that would be affected by the rule are those fishermen issued limited access permits for swordfish. As of December 31, 1999, there were 450 directed and incidental swordfish permit holders and 118 swordfish handgear permit holders. The proposed quota reductions and implementation of the dead discard allowance would, in the short term, reduce ex-vessel swordfish revenues for a substantial portion of the swordfish fleet.

Assuming the lower quotas would result in equal reductions in swordfish catch for all vessels, the majority of the fleet would experience declines in revenue of between 1 and 4 percent by 2001. By 2002, about 78 percent of vessels would experience declines in gross revenues of between 1 and 4 percent, and about 30 percent of the fleet would experience revenue decreases of 5 percent or more. Several more vessels would be affected, and to a greater degree, if dead discards exceed the allowance, thereby making further reductions to the landings quota necessary. However, even without compensatory actions by vessel operators (e.g., increased yellowfin tuna fishing), no vessels are expected to experience revenue declines of 10 percent or more. To the extent that swordfish dead discards can be reduced and vessels can switch to tuna fishing, the projected revenue declines may be overestimated. Additionally, a current decrease in swordfish mortality is expected to contribute to stock rebuilding within a 10-year time frame. Thus, negative short-term impacts would yield revenue gains in the long run.

No mitigating measures specific to small businesses are considered feasible. Not implementing the quota reductions and the dead discard allowance at this time would maintain current catch levels only in the short term. Eventually, further decline in swordfish abundance would increase fishing costs (lower catch per unit effort/increased discards) and decrease revenues (lower total swordfish catch); thus, greater economic impacts would likely result from maintaining the status quo.

The other alternatives considered include only the status quo for the landings quota and not accounting for dead discards. No other alternatives were considered, because NMFS is required under ATCA to implement ICCAT recommendations upon acceptance by the United States. Although the status quo might have lesser

short-term economic impacts on participants in the swordfish fishery, those alternatives do not support the rebuilding plan established by the FMP for Atlantic Tunas, Swordfish, and Sharks. The IRFA provides further discussion of the economic effects of the alternatives considered.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The proposed action would not impose any additional reporting or recordkeeping requirements subject to OMB approval under the Paperwork Reduction Act.

On November 19, 1999, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A new Biological Opinion (BO) will be issued in May 2000. The existing BO, dated May 29, 1999 concludes that continued operation of the longline component of the swordfish fishery may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. A reduced landings quota could result in decreased fishing effort targeting swordfish, primarily by pelagic longline vessels. Depending on where and how that displaced effort shifts to other fisheries, interactions with protected species may be reduced. No irretrievable commitments of resources are expected from the proposed action.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Treaties.

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Fisheries, Fishing, Treaties.

Dated: May 18, 2000

Penelope Dalton, Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635--ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

2. In § 635.27, paragraphs (c)(1)(i)(A) and (c)(3)(i) are revised, and paragraphs (c)(1)(i)(C) and (c)(3)(iii) are added to read as follows:

§ 635.27 Quotas.

* * * * *

(c) Swordfish. (1) * * *

(i) North Atlantic swordfish stock. (A) The directed fishery quota for the North Atlantic swordfish stock is 1919 mt dw for each fishing year beginning June 1, 2000. The annual directed fishery quota is subdivided into two equal semiannual quotas of 959.5 mt dw, one for June 1 through November 30, and the other

for December 1 through May 31 of the following year.

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(C) The dead discard allowance for the north Atlantic swordfish stock is: 320 mt ww for the fishing year beginning June 1, 2000; 240 mt ww for the fishing year beginning June 1, 2001; and 160 mt ww for the fishing year beginning May 1, 2001. All swordfish discarded dead, regardless of whether discarded from vessels permitted under this part, shall be counted against the allowance.

* * * * *

(3) Annual adjustments. (i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. NMFS will provide at least 30 days opportunity for public comment.

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(iii) The dressed weight equivalent of the amount of dead discards exceeding the allowance specified at paragraph (c)(1)(i)(C) of this section shall be subtracted from the landings quota in the following fishing year. NMFS will file with the Office of the Federal Register for publication notification of any adjustment made under this paragraph.